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NASA Procedural Requirements

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Subject: Nondiscrimination in Federally Assisted and Conducted Programs

Responsible Office: Office of Diversity & Equal Opportunity

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CHAPTER 3. Complaints Of Discrimination

3.1. Introduction

3.1.1. This chapter sets forth Procedural Requirements for the following authorities:

- a. 42 U.S.C. §§ 2000d - 2000d-7, as amended, Title VI of the Civil Rights Act of 1964.
- b. 20 U.S.C. §§ 1681-1688, as amended, Title IX of the Education Amendments Act of 1972.
- c. 29 U.S.C. § 794, as amended, Section 504 of the Rehabilitation Act of 1973.
- d. 42 U.S.C. § 6101, et seq., as amended, the Age Discrimination Act of 1975.
- e. 29 U.S.C. § 794d, as amended, Section 508 of the Rehabilitation Act of 1973.
- f. Executive Order 13160, Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs, June 23, 2000.[\[9\]](#)

3.1.2. The processing of discrimination complaints includes the following steps, set forth in chronological order:[\[10\]](#)

- a. Complaint Receipt
- b. Complaint Acknowledgement
- c. Complaint Evaluation
- d. Alternative Dispute Resolution Efforts
- e. Complaint Investigation
- f. Complaint Resolution
- g. Monitoring and Oversight When Required

3.1.3. Each step in this process is described below. Procedural information unique to specific statutes, regulations, or Executive Orders is set forth in the appendices to this manual.

3.1.4. OEOP personnel will maintain and safeguard all records and documents relating to the Procedural Requirements set forth below, following the guidance provided in NPG 1441.1D, NASA Records Retention Schedule. This would include proposing any changes to current retention schedules and developing new retention schedules when necessary.

3.1.5. Unless otherwise stated, all days are calendar days.

3.2. Complaint Receipt

3.2.1. If a complaint alleging discrimination is submitted or filed with any NASA Center or OEOP, the filing date of the complaint is the earlier of the following: the postmark of the complaint; or the date the complaint is received by any NASA Center. The receiving NASA Center will indicate the receipt date on the complaint immediately upon the date received and refer the complaint to OEOP within 5 days of receipt.[11] If OEOP receives the complaint from a NASA Center, the receipt date of the complaint will be the date noted on the complaint. If OEOP receives the complaint directly from the complainant, the receipt date will be the postmark date on the complaint.

3.2.2. In order to be accepted by OEOP, all written complaints must be "complete complaints." A complete complaint must include:

- a. The name, address, and telephone number of the complainant (for complaints alleging a violation of Executive Order 13160, the complaint must identify whether the complainant is a Federal employee and whether the complainant's involvement in the relevant education program was related to his or her employment);
- b. A description of the alleged discriminatory conduct in sufficient detail to inform the Agency as to the nature and approximate date of the alleged discrimination;[12] and
- c. The complainant's signature or the signature of someone authorized by the complainant to sign on the complainant's behalf.

3.3. Complaint Acknowledgement

3.3.1. Upon receipt by OEOP, the incoming complaint will be assigned a case number and OEOP will establish a case file. The case opening date will be the date a complaint is received by OEOP.[13]

3.3.2. OEOP will acknowledge receipt of the complaint by a written acknowledgement letter to the complainant within 15 days of complaint receipt. OEOP will notify the respondent of OEOP's receipt of the complaint concurrent with the complainant's acknowledgement letter. In addition, OEOP will forward a copy of the complaint to the respondent.

3.3.2.1. The acknowledgement letter will, at a minimum, include:

- a. The date the complaint was received;
- b. The case number assigned;
- c. A statement that the complaint is under review to determine NASA jurisdiction;
- d. An agency contact name and number; and
- e. Any other information that may be specifically required by the appropriate statute and notice that the complainant may consult an attorney.[14]

3.3.2.2. The acknowledgement letter will state that the complaint will be evaluated and assure the complainant that he or she will be contacted within 30 days.

3.3.2.3. Where OEOP determines that a complaint is incomplete, the acknowledgement letter will advise the complainant of the information needed to complete the complaint and that the information must be submitted within 30 days of the date of receipt of the acknowledgement letter (see paragraph 3.4.4 for "Gathering Basic Information").

3.3.2.4. If a complainant does not respond to the request for information necessary to complete the complaint, the Assistant Administrator, OEOP, will administratively close the complaint. If OEOP closes an incomplete complaint for lack of a response from the complainant, OEOP will notify the complainant and the respondent of the closure in writing within 30 days of complaint closure.

3.4. Complaint Evaluation

3.4.1. The Assistant Administrator, OEOP, will delegate authority to conduct complaint evaluation activities to appropriate OEOP staff.

3.4.2. NASA's objective is to complete the complaint evaluation as promptly as possible. The time required will vary depending upon the nature of the complaint and the amount of information provided. The target date for completion of the complaint evaluation is 30 days from receipt of the complaint by OEOP. Many complaints will be evaluated faster and some may require additional time. If NASA determines it will need additional time to complete its complaint evaluation, it will notify the complainant no later than 25 days after complaint receipt.

3.4.3. Intake

3.4.3.1. OEOP will review each complaint to determine whether it is complete, timely filed, within NASA jurisdiction, subject to the authorities enforced by NASA, that the complainant has standing, and whether the complaint must be resolved based on an investigation or is appropriate for early resolution or preinvestigation settlement. As a general

rule, all complaints accepted for processing will first be addressed through OEOP's Alternative Dispute Resolution (ADR) process before a formal investigation is initiated.

3.4.3.2. OEOP will make an appropriate referral of any complaints that are not within its jurisdiction or which are the subject of concurrent jurisdiction with another Federal, state, or local agency within 15 days of the determination for referral. The complainant will be notified of the referral in writing at the time the referral is forwarded to the appropriate agency. The respondent will likewise be informed.

3.4.4. Gathering Basic Information

3.4.4.1. OEOP will examine other sources of information (e.g., statistical data or respondent information) to ensure that it has sufficient information to evaluate complaints appropriately. OEOP staff will provide appropriate assistance to complainants, including persons with disabilities and individuals who, as a result of national origin, are limited in their English proficiency (LEP), may need help in providing information that NASA needs. This will include foreign nationals with updated visa information and naturalized citizens who are currently working on a NASA research grant or grants and who may need help in providing information that NASA needs.

3.4.4.2. OEOP may contact the complainant by telephone to obtain missing necessary information. A record of contact summarizing the conversation shall be placed in the case file. In the alternative, OEOP will inform the complainant in writing of the information needed. If the necessary information is not provided within 30 days of the date of the notification letter, the complaint will be closed and the complainant so informed. In cases where the complainant raises more than one claim and the complainant has provided sufficient information on one or more but not all claims, only those claims for which the complainant has provided sufficient information will be processed.

3.4.5. Jurisdiction and Issue/Subject Matter Identification

3.4.5.1. OEOP will identify the legal authority under which NASA has jurisdiction to process complaints.^[15] These include:

- a. Programs and activities receiving Federal financial assistance from NASA under Title VI of the Civil Rights of 1964, as amended; Title IX of the Education Amendments of 1972, as amended; and the Age Discrimination Act of 1975;
- b. Programs and activities conducted by NASA under Sections 504 and 508 of the Rehabilitation Act of 1973, as amended;
- c. Education and training programs conducted by NASA, as defined in Executive Order 13160, DOJ Executive Order 13160 guidance and this procedural manual.

3.4.5.2. OEOP will identify the specific form of alleged prohibited discrimination based on the protected classification. With respect to NASA-assisted programs, NASA has authority to process allegations of certain forms of discrimination, based on the following protected classifications: race, color, national origin, sex, disability, and age (pursuant to Title VI, Title IX, Section 504 of the Rehabilitation Act, and the Age Discrimination Act). With respect to NASA-conducted programs, NASA has authority over certain forms of discrimination based on disability (pursuant to Section 504 of the Rehabilitation Act). With respect to NASA-conducted education and training programs and activities, NASA has authority to process allegations of certain forms of discrimination based on race, color, national origin, sex, disability, age, religion, sexual orientation, and status as a parent.

3.4.5.3. OEOP will identify the subject matter based on a specific practice or service involved in the alleged discrimination, e.g., denial of services or access to a covered program, harassment by the program's employees, and unequal services in a program. Even if discriminatory intent cannot be ascertained, OEOP will identify the practice, procedure, policy, or service that is alleged to have a disparate effect on one or more members of a certain protected class. Generally speaking, in identifying the subject matter, OEOP will look for allegations of one or more of the following:^[16]

- a. Any difference in the quality, quantity, or manner in which a service or benefit is provided;
- b. Segregation in any part of a program or separate treatment in any manner;
- c. Restriction in the enjoyment of any advantages, privileges, or other benefits that are provided by the program;
- d. Different standards or requirements for participation or entry;
- e. Separate treatment in any manner related to receipt of services or benefits;
- f. Restriction of the membership of advisory or planning councils that are an integral part of Federally funded programs;
- g. Failure to accommodate the language needs of a limited-English-proficient person(s) (LEP);
- h. Failure to adequately advise person(s) in the eligible population of the existence of services or benefits;

- i. Use of criteria or methods of administration that would defeat or substantially impair the accomplishment of program objectives or would impact more heavily based on a protected classification;
- j. Discrimination in any aspect of employment;[\[17\]](#)
- k. Failure to provide reasonable accommodation to a qualified individual with a disability; and
- l. Failure to provide comparable access to electronic or information technology to an individual with a disability.

3.4.6. Timeliness

3.4.6.1. To be timely, complaints must be filed within 180 days from the date the person knew or shall have known of the alleged discrimination.

a. NASA's regulations effectuating Title VI of the Civil Rights Act of 1964, state that "a complaint must be filed no later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the Principal Compliance Officer or his or her designee." 14 CFR § 1250.106(b). Therefore, with respect to complaints alleging violations of Title VI, to be timely the complaint must be filed within 90 days from the date the person knew or shall have known of the alleged discrimination.

b. For purposes of these Procedural Requirements the "180-days" timeframe will be used since it is applicable in three of the other four statutes and Executive Order 13160. [\[18\]](#)

3.4.6.2. The filing date of a complaint is the earlier of the following:

- a. The postmark of the complaint; or
- b. The date the complaint is received by any NASA Component Facility or respondent.

3.4.6.3. Timely complaints include those where the complaint alleges a continuing discriminatory policy or practice. OEOP retains the authority to waive the timeliness requirement when it finds that good cause is shown. [\[19\]](#)

3.4.6.4. If a complaint is not filed in a timely manner, the Assistant Administrator, OEOP, or designee, may grant a waiver of the 180-day filing requirement under any of the following circumstances:

- a. The complainant could not reasonably be expected to know within the 180-day period that the act was discriminatory, and the complaint was filed within 60 days after the complainant became aware of the alleged discrimination.
- b. The complainant was unable to file a complaint because of illness or other incapacitating circumstances (e.g., incarceration) during the 180-day period, and the complaint was filed within 60 days after the period of illness or incapacitation ended.
- c. The complainant filed a complaint alleging the same discriminatory conduct within the 180-day period with another Federal, state, or local civil rights enforcement agency, and filed a complaint with NASA within 60 days after the other agency has completed its investigation or notified the complainant that it would take no further action.
- d. The complainant filed, within the 180-day period, an internal grievance alleging the same discriminatory conduct that is the subject of the NASA complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded.
- e. Unique circumstances generated by agency action have adversely affected the complainant.

3.4.6.5. If a waiver is not requested or is requested but not granted, the case will be closed and the complainant informed of the decision.

3.4.7. Complaint allegations with which NASA may not proceed further.

3.4.7.1. There are a variety of reasons why NASA may not proceed further with complaint allegations. These are described below: [\[20\]](#)

- a. The complaint is a continuation of a pattern of previously filed complaints involving the same or similar allegations against the same respondent or other respondents that repeatedly have been found factually or legally insubstantial by NASA.
- b. The same allegations and issues of the complaint have been addressed in a closed NASA complaint or compliance review.
- c. The complaint has been investigated by another agency and the resolution of the complaint meets NASA standards (i.e., all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet NASA's standards).
- d. The complaint allegations are foreclosed by previous decisions by Federal courts, the Secretary of Education, the Civil Rights Reviewing Authority, or NASA policy determinations.

e. The complainant decides to withdraw the complaint. If the complaint included class allegations, OEOP may:

- (1) Close the entire complaint;
- (2) Pursue resolution of the class allegations; and/or
- (3) Use the information to target future compliance review activity.

f. OEOP obtains information indicating that the allegations raised by the complaint have been resolved. In such cases, OEOP will attempt to confirm the resolution. If OEOP determines there are no current allegations appropriate for further complaint resolution, the complaint will be closed.

g. Litigation has been filed raising the same allegations previously filed in other complaints. Such cases may be refiled within 60 days following termination of the proceeding if there has been no decision on the merits or settlement of the complaint allegations. (Dismissal with prejudice is considered a decision on the merits.)

h. The same complaint allegations have been filed with another Federal, state, or local agency, or through a respondent's internal grievance procedures, including due process proceedings, and NASA anticipates that the Agency will provide the complainant with a comparable resolution process. The complainant shall be advised to refile within 60 days of the completion of the other agency's action. (Generally, NASA will not complete a de novo review of the case.)

i. OEOP obtains information that the complaint allegation is moot, and there are no class allegations.

j. OEOP determines that its ability to complete the investigation is being substantially impaired by the complainant's or injured party's refusal to cooperate. In such a case, the complainant or injured party must be contacted as soon as possible. If this does not resolve the matter, a letter will be sent to the complainant or injured party explaining why the failure to cooperate (including refusal to give permission to disclose identity) has made it impossible to investigate the complaint. Refusal to cooperate within 15 days of the date of the letter will result in OEOP closing the case; if the required information is not received within 20 days, the case will be closed.

k. A complaint over which NASA otherwise has jurisdiction may be closed when OEOP transfers or refers the complaint to another agency for investigation.

l. The death of the complainant or injured party makes it impossible to investigate the allegations fully.

3.4.7.2. Some complaints, because of their scope and nature, may require a large amount of resources. In such instances, the Assistant Administrator, OEOP, may consider treating such a complaint as a compliance review (See Chapter 4. Compliance Reviews Under the Civil Rights Act of 1964 (Title VI), the Education Amendments Act of 1972 (Title IX), the Rehabilitation Act of 1973 (Section 504), and the Age Discrimination Act of 1975, for more information on compliance reviews). If this option is selected, OEOP will discuss the decision with the complainant, close the complaint, assign a review number, and initiate the review as soon as possible. As part of this process, OEOP shall also consider whether any of the complaint allegations can be addressed immediately. The results of the review will be shared with the complainant upon completion.

3.4.7.3. If the Assistant Administrator, OEOP, determines that a compliance review is the most effective means of addressing multiple individual complaints against the same recipient, OEOP shall discuss the decision with the complainants, close the individual complaints, assign a review number, and initiate a review as soon as possible. Any outstanding individual allegations that cannot be promptly resolved shall be incorporated into the review. The results of the review will be shared with the complainants upon completion.

3.4.8. Notifying the Complainant and Respondent of Evaluation Determinations

3.4.8.1. If OEOP does not proceed to complaint resolution, the letter to the complainant (and respondent) will state that the complaint is being closed and will explain the reason for the decision. The letter(s) will be signed by the Assistant Administrator, OEOP, or designee.

3.4.8.2. If the complaint has been resolved during the evaluation process, the complaint resolution letter to the complainant (and respondent) shall contain:

- a. The basis for the complaint (e.g., race, color, national origin, sex, disability, and/or age; and, in the case of complaints filed pursuant to Executive Order 13160, religion, status as a parent, or sexual orientation); of the allegations over which NASA has jurisdiction;
- c. A brief statement of NASA's jurisdiction over the complaint;
- d. An explanation of the basis for NASA's determination that the complaint has been resolved; and
- e. A copy of any agreement resolving the complaint.

3.4.8.3. If NASA decides to proceed with complaint processing, the evaluation letters to the complainant and the respondent will contain:

- a. The basis for the complaint;
- b. A brief statement of the allegations over which NASA has jurisdiction;
- c. A brief statement of NASA's jurisdiction over the complaint;
- d. An indication of when the parties will be contacted; and
- e. An offer to engage in ADR (settlement negotiations) to resolve the complaint.[21]

3.4.8.4. If the complainant has questions or concerns about OEOP's resolution determination, the complainant shall contact the Assistant Administrator, OEOP, to verify the appropriateness of the complaint resolution. The complainant shall be encouraged to address these concerns with as much specificity as possible, focusing on factual or legal questions that would change the resolution of the case.

3.4.8.5. The right to file a separate court action.

a. The complainant shall be aware that a separate court action may be filed regardless of OEOP's findings, where a statutory right to file such an action exists. It shall be clear that, in resolving complaints, OEOP cannot and does not represent the complainant in the way that a person's private attorney would. OEOP acts as an impartial fact finder. If the complainant wishes to file a court action, he/she may do so through an attorney.

b. A complainant alleging discrimination prohibited by the Age Discrimination Act of 1975 may file a civil action in Federal court only after exhausting administrative remedies. Administrative remedies are exhausted upon the earlier of either

(1) 180 days have elapsed since the complainant filed the complaint with OEOP, and OEOP has made no finding with regard to the complaint, or

(2) OEOP issues a finding in favor of the respondent. If OEOP issues a finding in favor of the respondent, OEOP will promptly notify the complainant and will provide additional information regarding the complainant's right to file a civil action.

c. Complainants and respondents have the right to have a representative at all stages of the complaint procedure.

3.4.8.6. Prohibitions against intimidation or retaliation.

a. A respondent may not intimidate or retaliate against anyone who has either taken action or participated in an action to secure rights protected by the civil rights laws enforced by OEOP.

b. If any individual believes that he or she is being intimidated or retaliated against by a respondent because of the filing of a complaint or participating in the resolution of it, a complaint alleging such intimidation or retaliation may be filed with OEOP.

3.4.8.7. Investigatory uses of personal information.[22]

a. OEOP processes complaints and conducts compliance reviews regarding discrimination on the basis of race, color, national origin, sex, disability, or age at institutions that receive Federal financial assistance from NASA. The resolution of complaints may involve the collection and analysis of personal information, such as student records (including academic standing) and, in some cases, employment records.

b. No law requires a complainant to give personal information to OEOP, and no sanctions will be imposed on complainants or other individuals who do not cooperate in providing information requested by OEOP in connection with its case-resolution process. However, if OEOP is unable to obtain information needed to investigate or to otherwise resolve allegations of discrimination, it may be necessary for OEOP to discontinue its complaint-resolution processing.

3.5. Alternative Dispute Resolution Efforts

3.5.1. Conducting Alternative Dispute Resolution (ADR) Activities (Note: The Assistant Administrator, OEOP, will designate authority to conduct ADR activities.)

3.5.1.1. ADR encompasses a range of problem-solving processes whose basic purpose is to resolve disagreements without litigation. Before undertaking a formal investigation, OEOP will pursue resolution through ADR of all complaints over which OEOP has jurisdiction.

3.5.1.2. If a resolution through ADR efforts cannot be reached within 45 days after OEOP has forwarded the complaint evaluation letter, or if efforts to achieve an informal resolution are futile, OEOP will initiate a formal investigation. However, OEOP will continue to seek resolution through ADR efforts whenever possible.

3.5.2. Offering ADR to the Complainant and Respondent.

3.5.2.1. OEOP will include in all evaluation letters for complaints on which it decides to move to case resolution, an offer to engage in ADR methods (resolution between the parties (RBP) or negotiated settlement agreement) to resolve the complaint.

3.5.2.2. OEOP will set forth a brief explanation of the processes for RBP and negotiated settlement and request that each party indicate in a written response whether it will consent to participate. If OEOP has not received a response within 10 days from a party, it will contact the nonresponding party by telephone to determine the party's willingness to participate in ADR proceedings.

3.5.2.3. If OEOP cannot obtain both parties' written consent to participate in ADR within 20 days after OEOP has forwarded the complaint evaluation letter, OEOP will initiate a formal investigation.

3.5.2.4. If OEOP determines that further ADR efforts may result in a timely resolution to the case (at any time after a formal investigation has been initiated), OEOP may resume efforts to achieve case resolution through ADR.

3.5.3. Attempting to Resolve the Complaint Through ADR

3.5.3.1. OEOP's primary objective in conducting ADR is to resolve the complainant's allegations of discrimination. Any approach, or combination of approaches, may be initiated at any time and multiple approaches may be used to resolve any complaint.

3.5.3.2. OEOP may use a variety of fact-finding techniques, which may include informal fact finding such as joint discussions with the complainant and respondent. Any negotiated settlement agreement for corrective action will specify the action, if any, to be taken by the parties to resolve the complaint. Implementation of settlement agreements will be monitored by OEOP.

3.5.3.3. Techniques for Conducting ADR

a. Case Planning, Efforts to achieve complaint resolution include staff such as Equal Opportunity Specialist, Human Resources, and legal staff.[23] Case documentation must include, in writing, the specific allegations to be resolved and the expected internal timeframes.

b. Complaint Resolution Target Dates - NASA's objective is to resolve each case on its own merits in an appropriate and timely way. To accomplish this objective, OEOP will establish a target date of 45 days from the day OEOP forwarded the evaluation letter for each case. The initial target dates, any significant target date changes (more than 15 days), and the reasons for those changes shall be documented in the case file.

c. Resolution Between the Parties (see 3.5.2.1.) - Resolution between the Parties (RBP) facilitates the resolution of complaints by providing the parties involved the opportunity to resolve the allegations prompting the complaint. (Note: NASA Office of General Counsel legal review must be conducted prior to NASA management signing an agreement.)

(1) RBP may occur at any time during the complaint-resolution process.

(2) If the office determines that RBP is appropriate, and the complainant and the respondent (after being informed of the information above) are willing to proceed, the office will initiate RBP to facilitate an agreement between the respondent and the complainant.

(3) In RBP, OEOP does not sign, approve, or endorse any agreement reached between the parties; however, OEOP shall help the parties understand the different impacts of possible remedies. At the conclusion of RBP, OEOP shall obtain a copy of a statement signed by the complainant that the allegation has been resolved or a copy of any settlement agreement that has been signed by the complainant.

3.5.3.4. Once resolution of any allegation has been obtained, OEOP may close that portion of the complaint; other approaches may be utilized to resolve any outstanding allegations.

3.5.3.5. OEOP will not monitor the agreement but will inform the parties that if a breach occurs, the complainant has the right to file another complaint. If a new complaint is filed, OEOP will investigate allegations of discrimination, not allegations that the agreement has been breached. However, the 180-day limitation on timeliness of a complaint will be determined by the date of the alleged breach.

3.5.3.6. Communicate Decisions to Interested Parties - OEOP staff shall communicate with parties (complainants and respondents), as appropriate, regarding progress in resolving the complaint. Parties shall hear from OEOP on a regular basis regarding the status of any complaint not yet resolved. A record of these communications shall be included in the case file.

3.5.4. Achieving Complaint Resolution Through ADR

3.5.4.1. Developing the Agreement

a. Agreements must be in writing and signed by a person with authority to bind the respondent, reviewed by the General Counsel or designee (prior to signature by NASA management), and approved by the Assistant

Administrator, OEOP, or designee.

b. An agreement must include the following:

- (1) Specific acts or steps the respondent will take to resolve the allegations;
- (2) The timetable for implementing each act or step; and
- (3) A specific timetable for submission of documentation.

c. If, as a result of investigation, NASA has sufficient information to conclude that there are violations other than those alleged, these shall also be addressed in the agreement.

d. A copy of the complaint resolution letter will be attached to the agreement when it is forwarded to the complainant and the respondent.

3.5.4.2. Preparing Complaint Resolution Letters Where the Complaint is Resolved Through ADR

a. If the ADR process results in resolution of the complaint, OEOP will issue a complaint resolution letter within 10 days after both parties have signed the resolution agreement.

b. All resolution letters will be reviewed and signed by the Assistant Administrator, OEOP, or designee.

c. If resolution is the result of RBP, the allegations and other factual information must be reflected in the case file. A copy of any agreement between the parties shall be attached to the resolution letter.

d. For all other cases, the allegations, any civil rights violations established during the fact finding, pertinent factual information, and analysis, as appropriate, must be reflected in the case file and the resolution letter

e. The resolution letter must include sufficient information so that those receiving the document can understand how NASA reached its determination. Specifically, the complaint resolution letter shall contain:

- (1) The basis for the complaint (race, color, national origin, sex, disability, and/or age; and, in the case of complaints filed pursuant to Executive Order 13160, religion, status as a parent, or sexual orientation);
- (2) Each issue presented in the complaint;
- (3) A brief statement of the allegations over which NASA has jurisdiction;
- (4) A brief statement of NASA's jurisdiction over the complaint including the applicable legal authority and pertinent legal standards; and
- (5) A brief summary of the facts and evidence collected during the complaint investigation process.

f. OEOP will consult with the complainant to ensure that the interests of the complainant are appropriately considered. Written information may be given to the respondent and the complainant if helpful to the negotiation process.

g. A copy of any agreement must accompany the complaint resolution letter.

3.6. Complaint Investigations: Procedures and Requirements

3.6.1. Investigative Process Requirements

3.6.1.1. The Assistant Administrator, OEOP, will delegate authority to conduct complaint investigation activities to appropriate OEOP staff.

3.6.1.2. All investigations will be conducted impartially. Investigators will obtain all evidence pertinent and relevant to a determination of whether the complainant was subjected to discrimination in violation of applicable law and Executive Orders.

3.6.1.3. The facts, evidence, and findings of the investigation must result in a record that will withstand legal scrutiny.

3.6.1.4. When investigating complaints that allege discrimination in NASA-assisted or -conducted programs and activities, OEOP will be guided by established legal standards.

3.6.1.5. OEOP will complete all complaint investigations within 180 days after OEOP forwards notification letters to the complainant and the respondent of its intent to investigate.

3.6.1.6. Prior to conducting a complaint investigation, OEOP will develop an Investigative Plan (IP). The IP will serve as the blueprint for conducting the investigation. Review and/or revision of the IP will always be the first step in preparing for an investigation. The IP will encompass several key activities that must be accomplished to complete the complaint investigation in an effective manner. These are:

- a. Jurisdictional Determination
- b. Identification of Bases and Issues
- c. Complainant and Respondent Notification
- d. Identification of Applicable Legal Theories
- e. Information Request/Data Collection
- f. Onsite Determination and Notification

3.6.1.7. In general, the investigative process itself shall flow according to these actions, along with several others outside the context of the IP (including the interview process, analysis of the evidence, and the development of an Investigative Report (IR)). In the sections that follow, each aspect of the investigative process will be addressed.

3.6.2. Jurisdictional Information

The jurisdictional determination shall be made during the initial complaint evaluation. This means determining that a covered basis of discrimination has been alleged in a timely fashion against a respondent, giving the Agency jurisdiction to investigate. For purposes of the IP, the jurisdictional information shall be included as part of the planning phase.

3.6.3. Identification of Bases and Issues

As with the jurisdictional determination, the identification of bases and issues shall be completed during the complaint evaluation stage. Again, for purposes of the IP, the identification of the bases and issues shall be set forth in the planning section.

3.6.4. Complainant and Respondent Notification

3.6.4.1. Once OEOP has decided to proceed with investigation of the complaint, it will notify the complainant and the respondent that it has accepted the complaint for investigation.

3.6.4.2. The notification letter to the complainant and respondent will contain the following information:

- a. The basis for the complaint;
- b. A brief statement of the allegations over which NASA has jurisdiction;
- c. A brief statement of NASA's jurisdiction over the respondent to investigate the complaint; and
- d. An indication of when the parties will be contacted.

3.6.4.3. In complaints that raise limited (usually individual) allegations, OEOP may choose at its discretion to request a position statement from the respondent. This is a means for the respondent to offer a complete, detailed response to the allegations.

3.6.4.4. OEOP may make an offer in the notification letter to engage in ADR (settlement negotiations) to resolve the complaint, if the Center has agreed to engage in ADR and OEOP has determined that ADR is appropriate for the specific complaint.

3.6.5. Identification of Applicable Legal Theories

3.6.5.1. In conducting its complaint investigations and compliance reviews, NASA will seek to ensure that respondents are not engaging in prohibited discrimination.

3.6.5.2. Discrimination-related issues include:[24]

- a. Disparate Treatment;
- b. Disparate Impact;
- c. National Origin/Limited English Proficiency;
- d. Harassment;
- e. Reasonable Accommodation; and
- f. Retaliation.

3.6.6. Information Request/Data Collection[25]

3.6.6.1. OEOP will request documentary evidence from the respondent, develop interview questions based upon those data and any other available information, and conduct interviews with the complainant, respondent/agency personnel, and others as appropriate. The exact approach taken to data/information collection will vary from case to

case depending on the issues raised, the extent to which relevant data are in the control of the respondent or others, and investigative strategies.

3.6.6.2. OEOP will gather, review, and evaluate all written information pertinent to the case, including records of both the respondent and the complainant. In keeping with this objective, OEOP will clearly label all evidence, both documents and written records of contact, with information identifying the case being investigated and the circumstances under which the evidence was obtained (e.g., where and when an interview was conducted, and who provided a given document).

3.6.6.3. OEOP will attempt to answer the following concerning the allegations:

a. What happened? (Include who, when, where, and how.) Data must be gathered to determine whether an alleged event occurred or not.

b. Why did it happen? On what basis? For what reason? The information gathered must help the investigator determine whether the reasons alleged in the complaint are accurate or not.

3.6.6.4. Pertinent DOJ Title VI Investigations Manual guidance states: "Initially, the investigator will want to request enough information from the complainant to have a clear picture of the allegations -- the who, what, when, where, and why -- the evidence that the complainant believes would help support his or her assertion that discrimination has occurred. Complainants can be very helpful in providing information on the types of records a respondent keeps that will lend support to their allegations. They can also suggest important witnesses to interview who could give testimony to support their allegations. In addition, the initial data request to the respondent shall ask the respondent to identify and submit documentation to support its defenses and understanding of the events at issue." [26]

3.6.6.5. Preparing the Data Request Letter

a. A data request letter will be prepared for the respondent requesting information relevant to the investigation. This letter may be used to initiate information collection or to request additional information after the primary information collection activity has been completed.

b. The information request letter may take any of several forms. It may be:

(1) A comprehensive request for information covering all allegations made by the complainant and all data needed; or

(2) A preliminary request for information from the respondent to assist the investigator in determining more specific information needed; or

(3) A request for information that the respondent shall provide during the onsite visit; or,

(4) A combination of (2) and (3).

c. An information request letter shall contain:

(1) Identification by case number;

(2) Citation to the statute and/or regulations under which the investigation is being conducted;

(3) Reference to the Agency's legal authority for access to information;

(4) The information requested;

(5) An offer to settle or resolve the complaint, if appropriate; and,

(6) A deadline for responding to the request for information.

d. Examples of specific information requested may include, but are not limited to:

(1) A notice of all lawsuits (and, for recipients, complaints) filed against the recipient;

>(2) A description of assistance applications that the recipient has pending in other agencies and of other Federal assistance being provided;

(3) A description of any civil rights compliance reviews of the recipient during the preceding 2 years;

(4) A statement as to whether the recipient has been found in noncompliance with any relevant civil rights requirements;

(5) Information on the manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;

(6) Data on the population eligible to be served by race, color, and national origin;

- (7) Information regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English;
- (8) Information on the location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;
- (9) Data on the present or proposed membership, by race, color and national origin, in any planning or advisory body which is an integral part of the program;
- (10) Where relocation is involved, information regarding the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color, or national origin.

- e. Where additional data, such as demographic maps, the racial composition of affected neighborhoods or census data, is necessary or appropriate, for understanding information, NASA will require such data only to the extent that it is readily available or can be compiled with reasonable effort.
- f. The respondent will be given a maximum of 15 days from the date of OEOP's request to submit information.
- g. The respondent must provide OEOP with access to all books, records, accounts, and other sources of information or facilities that OEOP finds necessary to determine compliance. This includes what an employee can supply orally as well as any written information he/she may have that is not maintained elsewhere by the respondent.^[27]
- h. The respondent must submit information in any form OEOP stipulates as necessary for NASA's compliance activities.
- i. OEOP shall have access to a respondent's records, even if those records identify individuals by name and the names are not relevant to the investigation. To protect the confidential nature of the records, OEOP, for example, may permit the respondent to code names and retain a key to the code. However, OEOP shall inform the respondent that if at any time such a procedure impedes the timely investigation of the case, OEOP will need access to the unmodified records.
- j. Unless the request is made in the context of an ongoing complaint or compliance review investigation (see 5 CFR §1320.3), OEOP may not generally require a respondent to record information on a "form" or other standardized data collection instrument without obtaining prior approval for its use by the Office of Management and Budget. OEOP may, however, suggest suitable formats to be used at the discretion of the respondent as information collection instruments.
- k. Similarly, OEOP must consider Federal policies concerning paperwork burdens when requesting a respondent to do more than provide OEOP with access to normally maintained information. Requests that a respondent manipulate or compile information to meet an OEOP need must be reasonable and take into consideration the burden being placed on the respondent.
- l. If a respondent invites OEOP to come onsite and collect the requested information, and provides OEOP with sufficient access as determined by the Assistant Administrator, OEOP, to files, records, logs, and appropriate indexes for OEOP to extract the needed information, then the respondent has provided OEOP with the appropriate access.

3.6.7. Onsite Determination and Notification

3.6.7.1. An onsite investigation normally is not necessary where all of the following conditions are present:

- a. Individuals are not the primary source of information needed (e.g., interviews are unnecessary or can be conducted by telephone);
- b. All needed information and documentation can be specified precisely in the information request letter and can be easily provided by the respondent;
- c. The respondent can provide written documentation to verify its position in its response to the Agency's information request letter; and,
- d. There is good reason to conclude that the complainant is the only person affected by the allegations of discrimination.

3.6.7.2. DOJ recommends considering the following in making a final determination as to whether an onsite investigation is necessary:

- a. Personal contact with the complainant and the respondent may yield information and clarification that the investigator might not otherwise discover by just reviewing written documents or speaking over the telephone;
- b. Obtaining a more accurate impression of the physical environment and general atmosphere of the respondent

and the surrounding community may help in evaluating the evidence;

c. More effective communication can be established with representatives of the respondent, which can be of assistance to the investigator in the present or future complaint investigation; and

d. Some printed data can only be examined onsite for reasons of convenience, cost, format, or bulk.

3.6.7.3. Complainant Notification of Onsite Investigation: If it is decided that an onsite investigation is necessary, the notification to the complainant of the onsite investigation shall include, but not be limited to, the following:

a. Anticipated date of the onsite visit.

b. Time and place for interviewing the complainant.

c. Request for the complainant to provide any additional information and documentation he/she considers relevant to the investigation. This shall include a list of witnesses whom the complainant believes have information relevant to the allegations.

d. A timeframe to provide the additional information or documentation and list of witnesses.

3.6.7.4. Respondent Notification of Onsite Investigation: At this point in the review process, the respondent is already aware of the existence of the complaint, NASA's jurisdiction, the basis of the complaint, and NASA's legal authority to investigate the complainant's concerns. However, OEOP's letter notifying the respondent of the scheduled onsite visit shall:

a. Restate the allegations made by the complainant, the basis on which they are made, and the legal authority under which the complaint is being investigated.

b. State the section of the appropriate regulation that prohibits the discrimination (e.g., harassment and retaliation).

c. Provide the general time schedule under which the investigator will conduct the investigation.

d. Request additional information or data for the respondent to submit prior to the onsite, including a timeframe for submission of the information.

e. Identify additional data to review during the onsite, as a result of the investigative staff's review of information and data obtained prior to the onsite visit.

f. Request that all of respondent's staff to be interviewed and those responsible for the release of additional records be asked to be available as appropriate during the onsite investigation. Also, the letter shall request an orientation meeting with staff (state the date and time -- usually the second day of the onsite visit).

g. Identify the respondent's staff to be interviewed, if the investigator can determine this in advance. The investigator shall request that the respondent set up the interview schedule at convenient times and private locations during the onsite visit.

h. Suggest that the respondent designate a liaison person, if it has not already done so.

3.6.8. The Interview Process (Onsite)

3.6.8.1. OEOP will conduct interviews, take oral statements, and attempt to obtain independent written documentation to corroborate oral statements. The DOJ Title VI Investigations Manual states the following with regard to oral or "testimonial" evidence: "To obtain testimonial evidence, the investigator shall develop interview questions based on oral and written information and any other available data, and conduct interviews with the complainant, respondent's staff, and witnesses, as appropriate. Remember that, in gathering evidence to investigate and prove a case, the investigator shall not only look for evidence to support a prima facie case, but also to test the validity or truthfulness of any stated or anticipated defenses that the respondent has or may assert in the case. Therefore, the investigator will want to include a statement of the likely or enunciated defenses of the respondent and describe the evidence the investigator will need to test their validity. By addressing asserted or anticipated defenses "up front" when the investigator plan[s] the investigation and identifying the evidence the investigator will want to obtain, the investigator will save himself/herself (and the respondent) time and the possible aggravation of additional requests for data and interviews."^[28]

3.6.8.2. OEOP will give notice of the following items before initiating the substantive part of an interview:

a. A general explanation of why the person is being interviewed, including who OEOP is, what law or laws are part of the current investigation and, where appropriate, a brief explanation of what is being investigated.

b. A brief notice regarding the potential uses of the information to be obtained from him/her, the Freedom of Information Act, and the Privacy Act.

c. If the witness is an employee of a respondent, notice of his or her right not to have anyone else present during the interview and his or her right to refuse to reveal the content of an interview.

- d. The witness' right to personal representation during the interview by a person of his or her choice.
- e. The regulatory provisions concerning prohibition of intimidating or retaliatory acts by a respondent.
- f. In most cases, the respondent's counsel will be allowed to attend upper-level management interviews.

3.6.8.3. Before conducting an interview, the investigator shall know as much as possible about the purpose(s) intended to be served by the interview. The investigator shall make certain strategic decisions as to which witnesses to interview for which purpose, and in what sequence the interviews are to be conducted. Although there is no set "rule of thumb" in determining who shall be interviewed, certain categories of people are advisable:

a. Persons who have first-hand knowledge (shall be interviewed first.)

(1) Persons who were directly involved in the situation that the complainant has alleged occurred.

(2) Persons who were not directly involved, but who have first-hand knowledge of the processes, events, and issues being investigated.

b. Persons who have second-hand knowledge (shall be interviewed later, if the investigator determines that it is necessary):

(1) Persons who make decisions that are relevant to the issues under investigation, but who were not actually involved in the situation or the decisions in question.

(2) Persons with some familiarity with the criteria used in the various processes and policies on the issue(s) under investigation.

3.6.8.4. OEOP will develop a written record of the interview session, including both telephone and in-person interviews, to preserve information obtained.

a. Whether notes are taken or a tape recorder is used during a particular interview depends on the investigative technique of the interviewer and the reactions of the interviewee. Tape recording will be done only with the consent of the interviewee. Regardless of the technique used during the interview, a written record of the interview must be created.

b. The record of the interview to be placed in the case file must contain the following information:

(1) Case identification (name and case number);

(2) Name and identification of the interviewee, interviewer, and any other persons present (include an explanation for the presence of any other persons);

(3) Date, time, and location of interview (including whether the interview was conducted by telephone);

(4) A record of whether the interviewee was informed regarding the Freedom of Information Act and the Privacy Act; and

(5) A written record reflecting the questions and responses obtained during the interview (this need not be a verbatim transcript but must accurately reflect the responses of the witness).

3.6.8.5. The witness' right to representation does not include a general right to have other persons present during the interview. Besides the OEOP investigator, the person being interviewed, and any needed interpreters, the only other person present during any interview shall be the witness' personally designated representative.

3.6.8.6. If the witness, other than an upper-level manager, identifies the respondent's counsel or a supervisor or manager for the respondent as a personal representative, the witness shall be informed that such a person may have a conflict of interest between that person's responsibilities to the respondent and the person's responsibilities as a personal representative

3.6.8.7. The witness shall also be informed that if a representative with responsibilities to the respondent appears to interfere with OEOP's ability to interview the witness or obtain requested information, the representative will be asked to leave. The witness shall then be asked again if he/she wishes to have a personal representative and whom the witness wishes to have as that representative.

3.6.8.8. If the witness identifies the same person as the representative, and OEOP has no other reason to believe the presence of the identified representative will interfere with the gathering of information, OEOP shall proceed with the interview. Investigators shall discuss these considerations with the witness prior to scheduling the interview.

3.6.8.9. Interviews with Minors (Persons Under 18) or Legally Incompetent Individuals

a. Generally, parental or guardian written consent is to be obtained when interviewing any persons under 18 years of age or otherwise legally incompetent, for example, mentally impaired individuals.

- b. If a respondent refuses to allow students under 18 years of age to be interviewed without parental or guardian consent, even for general information, parental or guardian consent must be obtained.
- c. If parents or guardians refuse to provide consent for an interview, and OEOP determines that the child's information is critical, OEOP may attempt to secure parental or guardian consent by inviting the parent or guardian to be present during the interview. If consent is denied, OEOP will not interview the minor child.

3.6.8.10. Exit Interview

- a. Upon completion of the onsite interview, the information will be reviewed onsite with the Investigative Plan as a check to make certain that all of the necessary information has been gathered. It is often both difficult and very costly to conduct an additional onsite because important documents or interviews are overlooked. At this stage of the investigation, new questions and issues may arise. To clarify these issues and answer these questions during the exit interviews, or by telephone or in writing, the investigator shall be certain to get the documents and conduct the interviews before leaving the site.
- b. The exit interview is conducted separately for the complainant and the respondent. The exit interviews provide an opportunity to clarify any questions that may have arisen and to respond to any additional requests for information. The investigator shall explain that this exit interview does not mean the investigation is completed and that it may be necessary to return to seek additional information after reviewing the information collected during the onsite. The investigator shall explain to all parties the process the investigative staff will follow, if a violation is found.
- c. The investigator may have already reached a conclusion as to whether the respondent is in compliance or noncompliance with the Agency's requirements. Shall this happen, it is important that the investigator not communicate that opinion during the exit interview, unless the investigator has been authorized to do so.
- d. Examples of situations in which OEOP may wish to give the investigator approval may occur under the following conditions:
 - (1) The investigator has identified clear violations that the respondent shall begin addressing immediately, especially if they involve the safety of beneficiaries or others, or because of imminent harm to the complainant or others if the investigator delays. If the investigator does not want to say it is a violation, the investigator may wish to identify the problem as a "serious concern," and
 - (2) The investigator's supervisor has given the investigator permission to provide the respondent with this preliminary information at the exit interview. In that case, the investigator shall be prepared to provide the respondent with guidance (to the extent possible and if the investigator is asked) as to how the violation shall be corrected or what may be involved in developing a corrective plan for remedial and prospective relief. The benefit of this practice is that it allows OEOP to provide technical assistance to the respondent, and allows the respondent to take immediate action to correct clear violations, rather than waiting until the investigative findings are complete. The investigator shall consider this option (or the issuance of a partial letter of findings) when the rest of the investigation will obviously take some time to complete.

3.6.9. Analysis of the Evidence (Post Onsite)^[29]

3.6.9.1. Evidence standing alone does not prove a violation. It must be related to the policies and procedures of the respondent and issues under investigation.

3.6.9.2. To ensure the value of the collected and analyzed evidence investigative staff shall:

- >a. Note when the document was received and from whom.
- b. Make photocopies of all original documents.
- c. Document the circumstances under which the evidence was collected; what questions elicited the evidence; whether any statistical techniques were applied to the evidence, and if so, what they were. If computer-readable material is gathered, the investigator shall obtain a file layout that describes what the data are, in what space or slot on the storage medium, and contact NASA's computer systems personnel to determine what documentation is necessary.
- d. Always seek clarification where needed to understand any given document's written language, i.e., obtain definitions for abbreviations; identify words and phrases that are key to proper interpretation of the message; where words used within a given context do not take on an obvious meaning, ask interpretive questions; and do not make assumptions about the author's thinking.

3.6.9.3. Determining Relevance

- a. Read with a purpose. Know what information or answers the investigator is looking for and recognize their presence or absence. Where the evidence:

- (1) Does not provide the answers needed,

- (2) Does not provide any direction to a source for the answers needed, or
- (3) Does not raise additional questions (issue-related), the evidence, at least for the moment, is not relevant. (However, the fact that evidence is not relevant at this time does not mean that it could not become relevant at a later stage of the investigation.)
- b. Categorize the evidence by issue and/or allegation. (This is another test of the relevance of evidence.)

3.6.9.4. Verifying the Evidence

- a. Develop a system for cross-checking.
- b. Identify conflicting information and resolve the conflict to the extent possible. (Conflicts shall be resolved in order to establish validity of the evidence.)

3.6.9.5. Assembling the Evidence

- a. Develop an information flow pattern. Put the evidence together so that it illustrates a logical continuity of dependent, or related independent, occurrences leading to a conclusion.
- b. Be sure to "plug up the gaps" in any information the investigator has gathered to ensure completeness and thoroughness in assembling the evidence.

3.6.9.6. Drawing Conclusions

- a. Allow the evidence to speak for itself.
- b. Test conclusions. Try to consider all possible rebuttal arguments by the respondent and the complainant.

3.6.9.7. The analysis of numerical evidence can range from easily calculated averages (or means) to very complex techniques that can be performed efficiently by computers. Generally, a statistician may need to be consulted on all but the most routine and basic quantitative analyses.

- a. Analyses of statistical data shall be performed cautiously. All statistical tests have underlying assumptions that must be met if the test is to be valid. If the case shall go to administrative hearing or to court, someone will have to testify about the appropriateness, validity, and meaningfulness of the analyses.
- b. For these reasons, it may be wise to obtain the services of a statistician before performing very complex statistical analyses. In some instances, talking with a consultant by telephone may be all that is necessary to ensure that the investigator is on the "right track." In other instances, the issues may be so complex that an expert may need to be consulted before any evidence is even collected.
- c. Whenever a statistical consultant actually performs an analysis, the methodology, results, and implications shall be reported in writing and signed by the expert, preferably in a notarized affidavit. This protects the "standing" of the evidence, shall the expert not be available at a later time.
- d. There are two kinds of analysis that can be easily performed by investigators using hand calculators. These are not definitive analyses that will make the case, but they are very useful as clues or leads and will indicate if the services of an expert are needed.

(1) The first is an average or mean. It is obtained by adding up all the scores and dividing by the number of persons receiving those scores. Scores may include salaries, arrests, and disciplinary actions.

(2) The second kind of analysis that the investigator can perform is the computation of percentages. A figure expressed as a percent represents the portion of a whole, where the whole can be expressed as 100 percent. Percentages are useful to compare relationships. As an example, the investigator may want to compare the percent that a group participates in receiving a benefit or service to the percent that represents their distribution in a relevant population or service area.

- e. It is very important that the investigator choose similar, related, analogous denominators when making this comparative analysis. Otherwise, it may result in invalid or false conclusions.

3.6.10. The Investigative Report

3.6.10.1. When to Prepare an Investigative Report

- a. Ideally, an Investigative Report (IR) shall be prepared for all cases. At a minimum, an IR shall be prepared whenever a full investigation is completed. If an IR is not done in every case, it shall be prepared for all cases in which the Letter of Findings (LOF) will not stand on its own as support for the findings -- this will be the case in more complex or class cases that involve extensive analysis of written and/or testimonial evidence, rebuttal evidence from either party that must be addressed, or other factors that must be explained to support the findings. An IR must be prepared for all cases resulting in a Violation LOF.

b. If the case is straightforward, raises only limited issues, does not involve significant rebuttal by either party, and results in a compliance or "no violation" finding, an IR may not be necessary. In this case, a Closure Memorandum briefly outlining the basis for the "no violation" LOF will suffice. The memorandum shall address each allegation of the complaint so that the investigator can ensure that the allegations have all been addressed.

3.6.10.2. The IR is a detailed document that:

- a. Sets forth all facts pertinent to the case;
- b. Analyzes those facts in light of the complainant's allegation(s); and
- c. Recommends a determination as to the validity of the allegation(s) based on that analysis and the compliance status of the respondent.

3.6.10.3. The report shall be a document separate from the formal findings, whether they be in the form of Preliminary Findings or a formal LOF. Generally, the IR is not released to the complainant or the respondent except in conjunction with a judicial or administrative proceeding.

3.6.10.4. It may sometimes be appropriate to release sections of the IR to buttress the respondent's response to appeals of, and rebuttals to, the Preliminary Findings or formal LOF from the complainant or respondent. If the Assistant Administrator, OEOP, determines that the IR shall be released to anyone outside of NASA, the investigator shall consult with the NASA General Counsel to ensure that OEOP has complied with the provisions of the Privacy Act and Freedom of Information Act, i.e., that personally identifiable or confidential information is not released.

3.6.10.5. Purpose of the Investigative Report. The purpose of the IR is to:

- a. Organize and present the factual information collected during the investigation.
- b. Identify the location in the case file of the specific supportive documentation from which each statement, allegation, conclusion, or determination was drawn.
- c. Present an analysis of the information to determine the relevance of the facts to the allegations.
- d. Draw conclusions based on the analysis.
- e. Recommend corrective and/or remedial action, as appropriate.

3.6.10.6. Format of the Investigative Report.

a. Introduction - This section shall provide the reader with a historical overview of the actions taken on the case prior to OEOP's involvement and shall chart OEOP's activities prior to accepting the complaint for investigation.

b. Allegations - This section of the IR describes each individual or class allegation, stating it as succinctly and clearly as possible. For each allegation, the statutory or regulatory provision which the allegation would violate, if true, shall be cited, as well as the ground(s) upon which the allegation is based. Note: the investigator shall organize the complainant's allegations into a logical sequence that would be necessary to sustain a finding of compliance or noncompliance.

c. Methodology - This section explains how the investigation was conducted, what documents were reviewed, and which witnesses were interviewed. The investigator shall provide the reader with both quantitative and qualitative information about what was done with sufficient specificity to identify the types of documents reviewed (e.g., disciplinary files, rental applications, citizen complaints, and internal grievances) and the category and number of witnesses interviewed (e.g., three witnesses for the complainant, seven witnesses for the respondent [three management, four nonmanagement, including two witnesses at the scene of the incident giving rise to the complaint], and two individuals identified by the investigator).

d. Position Statement from the Respondent - No investigative report shall be completed or accepted without an entry under this section of the IR. This information shall be obtained from primary source documents such as correspondence with the respondent, or interviews with the respondent's officials. Where attempts have been made to provide the respondent with an opportunity to reply to the complainant's allegations, but the respondent has failed to respond or provide any support for its position, a description of the investigator's efforts to let the respondent respond shall also be included in this section.

e. Findings of Fact - All facts relevant to the investigator's analysis and recommended determination in the case shall be set forth in this section. It is important both to the settlement/conciliation process and for establishing credibility that only clear, accurate, and factual evidence be included in this section. Facts shall be presented in a logical sequence, such as the chronological order of the events or by subject matter. Factual issues in dispute shall be resolved through examination of the relevant documents and the testimony in the record. Where appropriate, specific evidence supporting a finding shall be cited, e.g., "statement of John Doe, who was at the meeting with the Director on June 2, 1996." Conclusions shall not be drawn. This section is intended only to establish the factual and logical basis for a determination on the merits of the allegations; the investigator's analyses and conclusions will

come in the next section.

f. Analysis and Recommended Determination

(1) In this section, the investigator conducts an analysis of the facts presented, and draws conclusions as to the validity of the complainant's allegations based on that analysis. Each fact shall be weighed against the allegation to which it pertains, and a prima facie case of discrimination either established based on the preponderance of the evidence or the allegation rejected as without merit. Each analysis, comparison, induction, deduction, generalization, or conclusion shall cite the supporting fact(s), by number, from the preceding section. All conclusions must be logical and reasonable reflections of the factual evidence as presented.

(2) In this section, the investigator shall also discuss any allegation(s) rejected by OEOP and the reasons for the rejection. However, the focus of the determination rests entirely on whether or not the weight of the evidence supports the complainant's allegation(s), and not on the existence or absence of procedural violations. Where those occur, unless they constitute a violation of one of the statutes OEOP enforces, they shall be brought to the attention of the appropriate NASA Component Facility.

g. Proposed Corrective/Remedial Action -- In this section, the investigator describes the action(s) (if any) required of the respondent in order to make the complainant whole and eliminate the discriminatory practices. The investigator may want to seek those remedies suggested by the complainant, but the investigator shall remember that the complaint is between the respondent and NASA concerning violation(s) of a Federal civil rights statute(s), regulation, or Executive Order. OEOP will ensure that the remedy sought will provide both remedial relief for identified victims and prospective relief (e.g., changes in policies and procedures, training for staff, development of adequate complaint procedures, and public notice to beneficiaries concerning new procedures) required to bring the respondent into compliance. Both remedial and prospective relief (corrective action) shall be specifically identified, not implied. OEOP also will ensure that all forms of relief granted are legally permissible.

3.7. Complaint Resolution

3.7.1. Completion of the Investigation and/or ADR:

3.7.1.1. OEOP will review, evaluate, and analyze the facts and evidence and apply the appropriate standards and legal theories to ensure findings and conclusions consistent with the applicable requirements and case law. The Assistant Administrator, OEOP, will review the IR and/or all relevant supporting material in the case file in order to determine what, if any, action is appropriate. If an investigation has been conducted, OEOP will issue a "Violation" or "No Violation" LOF not more than 60 days after the completion of an investigation.

3.7.1.2. OEOP may consider a complaint resolved when any of the following occur:

- a. OEOP facilitates resolution between the respondent and complainant through ADR (Resolution Between the Parties (RBP), or negotiated corrective action agreement resolving the allegations raised by the complainant).
- b. OEOP determines through complaint investigation that there is sufficient evidence to support a finding of a violation and negotiates an agreement with the respondent to take remedial/corrective actions(s) to resolve the allegations raised by the complainant .
- c. OEOP determines through complaint investigation that there is insufficient evidence to support a finding of a violation.

3.7.1.3. Findings and remedial/corrective actions, if appropriate, will be set forth in the LOF that takes effect when signed by the Assistant Administrator, OEOP. The allegations, any civil rights violations established during the fact finding, pertinent factual information, and analysis, as appropriate, must be reflected in the case file and LOF. The findings set forth in the LOF may be one of the following:

- a. A corrected violation finding (if OEOP concludes, or the respondent presents adequate documentation that an alleged violation that existed at the onset of the investigation was corrected prior to the conclusion of the investigation, the LOF will state that an alleged violation was voluntarily corrected by the respondent);
- b. A violation finding accompanied by an agreement for a specific remedial action or actions; or
- c. A "No Violation" finding.

3.7.1.4. The LOF must include sufficient information so that those receiving the document can understand how NASA reached its determination. Specifically, the LOF shall contain:

- a. The basis for the complaint (race, color, national origin, sex, disability, age, and/or reprisal); and, in the case of complaints filed pursuant to Executive Order 13160, religion, status as a parent, or sexual orientation;
- b. Each issue presented in the complaint;
- c. A statement of the allegations over which NASA has jurisdiction;

- d. A statement of NASA's jurisdiction over the complaint including the applicable legal authority and pertinent legal standards;
- e. A summary of the facts and evidence collected during the complaint investigation process;
- f. An explanation of the basis for NASA's determination with respect to each issue including a brief statement and analysis of the ultimate facts; and a definitive statement as to whether the respondent is or is not in compliance with respect to the specific issues. In selecting how much detail to include in the LOF, OEOP will consider a variety of factors, including the scope of the violation, length of plan implementation, conduct of the respondent, and respondent's or complainant's understanding of NASA's actions; and
- g. If OEOP facilitates an RBP or a negotiated settlement agreement, the LOF will reflect this.

3.7.2. Violation Findings

3.7.2.1. The Assistant Administrator, OEOP, will attempt to ensure that the complainant remains in the same position, or a substantially equivalent position, that he or she would have occupied absent discrimination.

3.7.2.2. The Assistant Administrator, OEOP, has the authority to order corrective and/or remedial action, where appropriate. As a general matter, if there has been a violation of any statutory, regulatory, or Executive Order authority that NASA enforces, the complainant shall be entitled to all appropriate, nonmonetary, equitable relief.

3.7.2.3. Upon a finding of a violation and the issuance of a violation LOF by the Assistant Administrator, OEOP, the respondent will be required to sign a corrective or remedial action agreement setting forth the specific corrective or remedial actions to be performed by the respondent and any timeframes in which these actions will be completed. This agreement must be signed by the respondent within 20 days after it has been issued by the Assistant Administrator, OEOP.

3.7.2.4. Where the respondent disagrees with an OEOP finding that the respondent is in violation of NASA regulations, the respondent must provide OEOP with a written analysis in support of its position within 15 days after receiving the LOF.

a. The respondent's rebuttal must include, and is to be limited to, the following:

- (1) The specific issue for which the respondent does not agree with OEOP's finding; and,
- (2) A concise statement of the basis for the disagreement, limited to either or both:
 - (i) a procedural defect in OEOP's collection of facts and evidence; or
 - (ii) a showing that OEOP's analysis of the facts and evidence was defective, including the application of the legal standards on which OEOP relied to reach its conclusion.

b. Respondent Rebuttal to Violation Findings

(1) The request for the directive to comply will be referenced in all subsequent agency accountability reports to the Administrator and the Assistant Administrator, OEOP, until compliance has been achieved.

(2) OEOP must respond to the respondent's rebuttal within 15 days after receipt. If OEOP agrees with and accepts the respondent's position, OEOP will issue a revised LOF within 15 days after its notice of acceptance. If OEOP rejects the respondent's rebuttal, OEOP must notify the respondent of the rejection and the reasons and re-advise the respondent of its obligation, as set forth in the LOF, as originally presented to the complainant.

(3) Where the respondent issues a rebuttal rejected by OEOP, shall the respondent fail or refuse to correct any violation cited in the LOF following OEOP's rejection of its rebuttal, the Assistant Administrator, OEOP, will notify the NASA Administrator, the Office of the General Counsel, and the appropriate NASA managers, documenting the basis for its finding and requesting that the Administrator issue a directive to comply.

3.7.2.5. Violations Under Executive Order 13160 and Section 508 of the Rehabilitation Act Amendments of 1998

a. Section 508 of the Rehabilitation Act, like Executive Order 13160, applies only to federally conducted programs. As a general matter, remedial or corrective action under Section 508 will be similar to that under Executive Order 13160, in that NASA may be required to take remedial or corrective action upon a violation finding by the Assistant Administrator, OEOP.

b. The Assistant Administrator, OEOP, also will take all necessary steps to ensure that the corrective or remedial action ordered is implemented. If a determination is made that the complainant is not entitled to any corrective or remedial action, the Assistant Administrator, OEOP, will notify the complainant of this decision and the reasons for this determination.

If the Assistant Administrator, OEOP, does determine that the complainant is entitled to some form of remedial or corrective action, the Assistant Administrator, OEOP, will so notify the complainant in writing.

- c. In the LOF, OEOP will make recommendations for any corrective and/or remedial action. A copy of the LOF will be sent to both the complainant and the respondent, including the employee who is the subject of the LOF.
- d. Specific remedies under these authorities are likely to include placement in the next available education or training program of a comparable nature; the development of an individualized training opportunity; the cancellation of an unwarranted personnel action or the expungement of adverse materials from agency records; the awarding of a diploma, other certificate, or specific grade; and the provision of specific reasonable accommodations.

e. Under Executive Order 13160

(1) Any LOF with a violation finding will include language to ensure that complainants are aware that Section 8 of the Executive Order specifically provides that the order "is not intended, and shall not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees." Section 8 further provides, however, that the Executive Order is not intended "to preclude judicial review of final decisions in accordance with the Administrative Procedures Act, 5 U.S.C. 701, et seq."

(2) If a determination is made that any NASA employee has not complied with the Executive Order or any of its implementing rules, regulations, policies, or guidance, Section 4-402 of the Executive Order requires any action taken to discipline an employee, including removal, must be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Public Law No. 95-454, 92 Stat. 1111.

3.7.2.6. Violations Under Title VI, Title IX, Section 504, and the Age Discrimination Act

a. If OEOP determines that the recipient has violated one or more provisions of the civil rights laws, and the recipient is unwilling to correct the violation(s), OEOP will promptly issue a violation LOF specifying the factual findings and the legal basis for the violation(s). OEOP will again attempt to negotiate a corrective action agreement.

b. If OEOP is still unable to obtain voluntary compliance, OEOP will move immediately to enforcement by either initiating administrative enforcement proceedings or referring the case to the Department of Justice. OEOP can move immediately to defer any new or additional Federal financial assistance to the recipient, and will begin administrative enforcement proceedings to terminate existing Federal assistance. [30]

3.7.3. "No Violation" Findings

3.7.3.1. If a determination is made that there has been no violation of any statutory, regulatory, or Executive Order authority, a copy of the LOF also shall be sent to both the complainant and the respondent.

3.7.3.2. In such cases, although no action is required, a copy of the report shall nevertheless be sent to the appropriate agency official.

3.8. Monitoring and Oversight

3.8.1. Following the issuance of a finding of discrimination, OEOP will monitor and

evaluate the respondent's corrective action activities to ensure an outcome that reflects compliance with the corrective action ordered in the LOF or agreed to in a settlement.

3.8.2. Monitoring is critical to ensure that all necessary actions are completed. NASA monitors the implementation of all agreements that include actions to be taken subsequent to the date of any agreement. Monitoring may or may not require an onsite visit.

3.8.3. Monitoring activities shall be undertaken as outlined in the agreement. The NASA Assistant Administrator, OEOP, or designee, may agree to modify the schedule or the terms of the agreement, if necessary. A memorandum that records the basis for such a modification shall be placed in the case file. Any modifications to the agreement must be appended to the original agreement.

3.8.3.1. The respondent and the complainant shall be notified, in writing, of significant modifications to the agreement and successful completion of the agreement.

3.8.3.2. If a respondent has failed to satisfactorily complete its agreement, the respondent and the complainant will be notified promptly in writing of this determination.

3.8.3.3. If OEOP and the respondent are unable to resolve any deficiencies during the implementation of the agreement, the Assistant Administrator, OEOP, will take appropriate action, including enforcement action pursuant to Title VI, Title IX, Section 504, and the Age Discrimination Act, or a Directive to Comply pursuant to Executive Order 13160 or Section 508 of the Rehabilitation Act.

3.8.3.4. When the respondent completes its program of corrective actions and compliance has been achieved, OEOP will notify the NASA Administrator, the NASA Assistant Administrator, OEOP, the NASA General Counsel, and NASA manager(s) or the NASA recipient head (i.e., highest ranking management official, e.g., Chief Executive

Officer, President of the University), as appropriate, following which, the case will be closed.

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